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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED], INC.

Contact: [REDACTED], Inc.
[REDACTED]

FINAL RULING NO. 2013-59
November 8, 2013

Tangible Personal Property Tax Assessment relating to
January 1, 2010 Assessment Date or 2010 Tax Year

FINAL RULING

The Kentucky Department of Revenue (“the Department”) issued an omitted tangible personal property ad valorem tax assessment against [REDACTED], Inc. (“[REDACTED]”) for the 2010 tax year. This assessment was attributable to [REDACTED]’s failure to file its tangible personal property ad valorem tax return for that year. [REDACTED] has paid the amount of tax represented by this assessment (\$ [REDACTED]), but has not remitted the interest due and the applicable penalty and cost of collection fee, which were also assessed and are shown in the chart below:

Tax Year	Interest as of 11/08/2013	Penalty as of 11/08/2013	Collection Fee as of 11/08/2013	Total Due As of 11/08/2013
January 1, 2010	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

In its letter protesting the 2010 assessment, [REDACTED] acknowledged that the tax assessed was properly due and enclosed payment of the amount of tax only. It protested and sought abatement of the interest, penalty and cost of collection fee that were part of the assessment in question.

The accrual of interest on omitted tangible personal property ad valorem tax assessments is mandatory. See KRS 132.290(4); 131.010(6); 131.183(1)(a). This interest cannot be waived by virtue of KRS 131.175, which states:

Notwithstanding any other provisions of KRS Chapters 131 to 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have authority to waive the penalty, but not interest, where it is shown to the satisfaction of the department that failure to file or pay timely is due to reasonable cause.

Therefore, ██████████'s protest and request for abatement of interest are without merit.

As indicated above, a 20% penalty was assessed in accordance with KRS 132.290(4) because the omitted property in question was not voluntarily listed or reported. A 50% cost of collection fee was assessed in accordance with KRS 131.440(1)(a)3 because ██████████ had failed to file a return for a period (i.e., the 2010 tax year) for which tax amnesty had been available. See KRS 131.400(1)(2), and (4)(b). Under KRS 131.175, the Department has the authority to waive assessed penalties where it is shown to its satisfaction that the failure to file or pay timely is due to reasonable cause. Similarly, a cost of collection fee may also be waived pursuant to KRS 131.440(2) if the taxpayer can establish reasonable cause. ██████████ has not made any showing of reasonable cause that would justify waiver of the penalty and cost of collection fee assessed. See 103 KAR 1:040. Its protest and request for abatement of the assessed penalty and cost of collection fee are likewise without merit.

Therefore, the outstanding assessments of interest, penalty, and cost of collection fee are legitimate liabilities of ██████████, Inc. due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

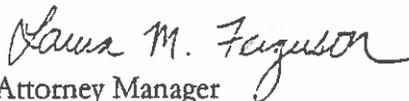
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET


Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED